

LAKE COUNTY BOARD of ADJUSTMENT
Sept. 13, 2017
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Merle Parise, Mary Jensen

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Lita Fonda

Frank Mutch called the meeting to order at 4:02 pm

MEEK CONDITIONAL USE—SWAN SITES (4:02 pm)

Jacob Feistner noted that the applicants, Brian and Kelly Saari of Snowbird Storage, and the owners, Richard & Donnie Meek, were in attendance and presented the staff report. (See attachments to minutes in the Sept. 2017 meeting file for staff report.)

Jacob clarified the percentage of impervious surface at Brian Saari's request. Total lot size minus setbacks and areas with greater than 25% slope would give an amount. Up to 29% of that amount could be developed as a permitted use. A conditional use could allow up to 49% to be developed with Board approval. Kelly asked about the parameters for getting that second approval. Jacob said a conditional use was something that zoning anticipated and a process was provided. They would look for mitigation for having additional coverage. An example was to show that the applicant would account for additional stormwater from structures and that they were going to comply with setbacks and not impact the neighbors or the natural environment in adding additional impervious coverage. They would try to address impacts from that through the conditional use process. It wasn't a guarantee. The Board approved conditional uses if they felt the impacts were mitigated.

Steve said they might want to consider mitigations such as good stormwater retention on the property, which was required. It might mean they'd have to put gutters on the buildings, collect that water and put in infiltration places to avoid having stormwater runoff onto the neighbors' property. It looked like [the property surface] would be either packed gravel driveway or building. Neither allowed the water to soak into the ground very well. A designer or engineer would have to design a stormwater retention system. Brian asked if it made a difference if the building shed water to the back side with the 20 foot setback rather to the gravel side. Steve and Frank said that would be up to the designer to see if the soils could handle that.

Frank said it would make sense to design the first building for the ultimate development and get the water issue resolved so they didn't have to go back and redo it. If they were fairly certain they would have 2 buildings, they might as well figure out that issue now rather than later.

Donnie Meek said that with the existing shop, a big snow load came off [the roof] to the ground, which absorbed it without puddles. She didn't think it would be a problem as long as it wasn't going on to the gravel side. Frank said it had to be resolved to the satisfaction of the Planning Dept. Donnie asked about another aspect mentioned previously to him that might be involved

later. Jacob thought this was the Buildings for Lease or Rent (BLR) regulations, which would also be handled by the Planning Dept.

Merle also recommended that they plan and do the homework for the second building now if they wanted to do a second building. It would avoid finding out things they would have to do at the last minute. Brian said that was part of the purpose of this meeting for them. They were going to purchase the property but they had to be able to get in a certain number of units to make it pencil out for them. If possible, it would be better to have the approvals ahead of time. Frank said if they wanted to build one building right away and defer further investment pending on how the first one went, they could still do the design for the water issue based on the assumption they'd have 2 buildings and incorporate it into the first building. This would be more efficient and save them time and money to do this in advance.

Steve turned to condition #2, removed 'construction and', and inserted 'as a conditional use' after 'storage unit business'. If the conditional use was approved, they would then ask for a zoning conformance permit for the construction, and BLR. Jacob described the BLR, which was a new process in 2017, and an exemption that might apply if they were to go through the zoning conformance process and address the items that the BLR addressed.

Public comment opened: No public present to comment. *Public comment closed.*

Motion made by Steve Rosso, and seconded by Don Patterson, to accept the findings of fact and approve the conditional use with the changes made in terms and conditions. Motion carried, all in favor.

Jacob clarified for the applicants that now they had approval for the use and could talk about the structure and lot layout and so forth. Brian checked that they could work on the zoning conformance process for the multiple buildings and stormwater and so forth, and start designing. Jacob said the zoning conformance came next, which would address the zoning and the BLR. Brian asked if this needed to take place after they owned the property. Jacob said they could continue to work on it if they had permission from the landowners. Brian said the closing should come up shortly. Jacob confirmed for Kelly that he would give them a letter [about tonight's proceedings].

SKIDOO BAY LLC CONDITIONAL USE—FINLEY POINT (4:20 pm)

Rob Edington noted that the Western Montana Land Services (aka Carstens) agent here to represent the applicants was Tiffani Murphy. He presented the staff report. (See attachments to minutes in the Sept. 2017 meeting file for staff report.)

Rob and the Board located and identified various structures and features on the plat map of attachment 8.

Tiffani Murphy reiterated that there were no bedrooms. It would not be used as a living facility, just some of the living area. It wouldn't be packed with people or rented. It would not have a bathroom. Merle checked about the apparent topsoil added in attachment 6. Rob said the topsoil

was overburden from the new single-family residence, which was shown in orange [on attachment 8]. He further described structures using photos in attachment 6.

Frank asked what would be needed to install a bathroom at a later time. Rob confirmed this would be a procedure through Environmental Health. His understanding for Planning was the further requirement would be to obtain approval from Environmental Health. It wouldn't affect the designation as a guest house.

Steve inserted 'exceed' in condition #4 on pg. 17, between 'not' and '29%'. In condition #5, 'not' was removed from between 'shall' and 'exceed'. Frank added 'with guest quarters' after 'dry garage' in condition #3 after some discussion on the correct words. Frank asked if they would have a problem if they wanted to expand the guest portion internally in the future. Jacob thought the Board could condition that they get more review if the Board wanted. Steve asked if an added bathroom would be within the 1300 square feet. Tiffani said the owner had no intention to add a bathroom or other living quarters. The house was close. Rob noted there was a storage room included in the 1300 square feet that could be converted to a bathroom. Steve remarked a future owner might put in a bathroom. Jacob asked if the Board wanted to condition that further expansion required further Board approval. Board members thought Planning Dept. approval was sufficient. Steve added the staff could decide if it needed to go in front of the Board at that time. Frank thought it could be worded as 'review and approval as appropriate' and left up to staff.

Jacob clarified that the initial review for a conditional use or variance would always go to the Board. In a case like this, the question was if the addition of a bathroom needed additional Board review, and if they want to tie it to the square footage and anything over that square footage came back to the Board. Steve thought a time factor might also be involved. Ten years from now, if someone wanted a bathroom in there, the owners and neighbors at the time should have the opportunity of a public hearing. He agreed it should be left open. Frank suggested granting 1400 square feet. Steve said if the bathroom was within the 1300 square feet, it wasn't an issue. Merle double-checked there was room for a bathroom within the 1300 square feet and Tiffani affirmed.

Public comment: No public were present to comment. *Public comment closed.*

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use subject to the findings of facts, terms and conditions as amended. Motion carried, all in favor.

SEMSAK-WALKER SETBACK VARIANCE (4:40 pm)

Rob Edington presented the staff report. (See attachments to minutes in the Sept. 2017 meeting file for staff report.)

Frank had questions on setbacks and attachment 5. Rob explained that attachment 5 was the applicant's drawing of the proposed site plan and the applicant, Phyllis Semsak Walker, might be better able to answer. The building was slightly rotated with the SW corner being closest to the street. He estimated the corner of that building was at 22 feet. He also referred to attachment 3.

Frank thought if what Phyllis owned included half the width of the unclaimed road, she was in great shape for the garage. Rob pointed to attachment 1 and how it showed 13th Ave extending past her property. He described the access for various properties to the east of the subject property. Merle asked if this parcel was included in an area the City was going to annex and described a newspaper article he'd seen. Rob noted that a zoning change went through on portions still in the County. This applicant applied prior to the zoning change so this was being considered under the previous zoning. Jacob explained this was still in the County's jurisdiction; the zoning change was finalized in August. That was why this was called MRZD (Medium Density Residential Zoning District) rather than LRZD (Low Density Residential Zoning District) in the report.

From a recent meeting where this property was discussed, Steve recalled discussion of [Polson Development Code] VII.D.2 regarding accessory buildings and placement in rear yards but not front or required side yards. Did this need to be handled? Rob noted Planning staff discussed whether or not to interpret that as front or side yard. It could be interpreted as the side yard. Steve asked for clarification on the side yards using attachment 5. Wouldn't she be clear of the setbacks if this was the side? Rob said she'd still need to maintain 25 feet from where the [platted] street should be. Discussion of the situation using various attachments ensued. Steve thought if they were to approve this, they should approve the building being in the front yard so she wouldn't have to come back. Frank asked if they could define the front as the side facing the road. Steve said the other issue was what the side yard was and how far it came into the front yard. Front yard went from side property line to side property line, probably in front of the main house. In other jurisdictions, [a structure] had to be in the side yard and behind the front of the house. A bunch of interpretation was being used here. If they put something in that it was okay to have the garage with the apartment in it forward of the house in the front yard, they could grant that too.

Jacob said when they looked at it, they considered where the platted street was. The house was addressed off of that street so that was the front yard. He read the definition of the yard. They considered that it was in the front setback, which was getting a variance, and it wasn't located between the house and the street. It was on the west side of the house, although in the front setback. Because it was getting a variance from the setback and was located to the west of the house, staff felt like that covered it. If the Board thought it needed more, they could include some language.

Mary said it was existing. Why would someone in the future have a problem with where this building was placed? Rob understood that this was created in 2002 and unpermitted at the time. Zoning came into effect in 1993. The previous review was for the apartment. It was currently an unpermitted structure that existed for a long time. Frank asked if 13th Ave East could be considered the front. Rob thought it could be permitted in its current location regardless of the setback definitions and future expansion of this structure must meet current setbacks at that time.

For condition #1 on pg. 16, Steve and Jacob added 'and in the front yard as defined by the Polson Development Code' after 'a public street' in the second line. Steve also changed 'setback' to 'property line' at the end of the 3rd line of condition #1. This was more consistent with the Code and also didn't imply another distance added to the setback distance. He didn't

know if this also needed to be corrected in the findings of fact. In condition #2, Steve removed 'be' between 'the' and 'plans' in the first line. In condition #3, he added 'and the existing unpermitted accessory outbuilding' after 'above the garage' in the first line.

Steve asked how important it was to correct things in the findings of fact. Jacob said it would only be in the record. The staff wouldn't go back and change it in print. They agreed that the conditions would be worded properly.

Phyllis Semsak Walker spoke about her application. This had been a learning experience. The property was sloped and hilled. The other houses on the street had the garages beside the houses so she didn't think that was something to worry about. She apologized for the trouble. The shed was originally for the lawnmower. The neighbor who helped her build it thought they'd done that in 1993. Steve said it looked like a little house rather than a shed. What was it used for now? Phyllis replied it was going to be her office. She confirmed for Mary that it was one room. Steve checked with the planners that it couldn't be living space. Jacob said it could not be used as a bunkhouse. Steve said she had the extra living space on top of the garage. Mary asked about use as an office, and Jacob said if her hobby was to have her office in a shed. If they didn't have a condition on there [that it couldn't be living space], it would probably be good to add one.

Frank added '(not to be used as a living space)' after 'and the existing unpermitted accessory outbuilding' where that had been added to condition #3.

Merle asked if the shed was portable. Phyllis acknowledged that it was. It was on blocks. The cost of moving it was greater than the cost of the shed. It did need to be jacked up and put on more blocks. They built it there. It wasn't brought in.

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the variance with findings of fact and conditions as modified. Motion carried, all in favor.

The Board confirmed for Lita that there were no changes to the findings, just the conditions.

MINUTES (5:14 pm)

5/11/16 Minutes: Steve pointed to the last sentence of the 4th paragraph on pg. 4. It didn't make sense in the context of the conversation. Lita suggested just eliminating it. Frank and the Board agreed. On pg. 7 in the second line of the 3rd paragraph, Steve changed 'doing' to 'down'. In the first line on pg. 9, the word order was corrected to 'what were they doing'. **Motion made by Frank Mutch, and seconded by Merle Parise, to approve the May 11, 2016 meeting minutes as amended. Motion carried, all in favor.**

4/12/17 Minutes: On pg. 4 in the 7th line of the 3rd paragraph, Steve eliminated the sentence after 'forgiveness'. **Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the April 12, 2017 meeting minutes as amended. Motion carried, all in favor.**

5/10/17 Minutes: In the first line on pg. 4, Steve added 'from the' prior to 'Board'. **Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the May 10, 2017 meeting minutes as amended. Motion carried, all in favor.**

8/9/17 Minutes: Motion made by Steve Rosso and seconded by Merle Parise, to approve the Aug. 9, 2017 meeting minutes as written. Motion carried, 4 in favor (Don Patterson, Frank Mutch, Steve Rosso, Merle Parise) and one abstention (Mary Jensen).

OTHER BUSINESS (5:22 pm)

Steve shared a handout (see attachments to minutes in the Sept. 2017 meeting file for handout) regarding tests showing the importance of lakeshore buffer zones with land use development. Frank touched on differences in what the County and Tribe did on the lakeshore. The group talked about this briefly.

Frank Mutch, chair, adjourned the meeting at 5:27 pm.